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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,811	03/19/2004	David L. Selinger	MIPS.232A	7068

20995 7590 08/29/2008

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EXAMINER	
DUNHAM, JASON B	

ART UNIT	PAPER NUMBER
3625	

NOTIFICATION DATE	DELIVERY MODE
08/29/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/804,811	SELINGER ET AL.	
	Examiner	Art Unit	
	JASON B. DUNHAM	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-17 and 35-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-17 and 35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7/24/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2008 has been entered. Applicant amended claims 10-17, canceled claims 18-20, and added claims 35-44. Claims 10-17 and 35-44 are pending. Cancellation of claim 20 rendered the previous 35 USC 101 and 112 rejections moot.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 38-44 is rejected under 35 U.S.C. 101.

Referring to claims 38-44. Claims to computer-related inventions that are clearly nonstatutory fall into the same general categories as nonstatutory claims in other arts, namely natural phenomena such as magnetism, and abstract ideas or laws of nature which constitute “descriptive material.” Abstract ideas, Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759, or the mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58, are not patentable. Descriptive material can be

characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se. Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Claims 38-44 recite a "data analyzer" which is directed towards software not embodied in a medium.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-14, 35, and 37-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Gross (US 2004/0267604).

Referring to claim 10. Gross discloses a method in a computer system for assisting users in selecting items to order, comprising:

determining, for each of a plurality of items, a score reflecting the extent to which the respective item has been ordered by customers who have been determined to commonly order items promptly after they become available, each score corresponding to a respective item (Gross: abstract, figure 3a, and paragraph 26);

incorporating information pertaining to said scores into item detail pages of an electronic catalog that provides functionality for customers to browse and place orders for items, said information being sufficient to enable customers to compare at least some of the items in terms of an extent to which such items have been order by customers who commonly order items promptly after they become available (Gross: paragraphs 93 and 202 disclosing identifying "trendy" items popular with early adopters and cataloging them in a search engine).

Referring to claims 11-14. Gross discloses a method including an indication of the score for an item in an item detail page for the respective item including a range and relationship to scores for additional items (Gross: paragraph 86 disclosing scores for items within a search engine). The examiner submits that a search engine is a type of electronic catalog providing details about items searched by a user with relevance scoring (i.e. relationship to other items). See also paragraphs 43 and 191 of Gross.

Referring to claim 35. Gross further discloses a method comprising generating each score such that it negatively relates to the amount of time that has elapsed since the respective item became available for ordering (Gross: paragraph 26 disclosing measuring a prevalence rate at a first time after introduction of an item).

Referring to claim 37. Gross further discloses a method comprising used said scores to selected a subset of items that represent early adopter selections, and incorporating information into corresponding item detail pages identifying each item in said subset as an early adopter selection (Gross: paragraphs 76-80 disclosing identification of "trendy" items).

Referring to claim 38. System claim 38 is rejected under the same rationale set forth in the method claim containing similar limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 15-17, 36, and 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross (US 2004/0260600) in view of Walker (US 6,049,778).

Referring to claims 15-17 and 40. Gross discloses all of the above as noted under the 102(e) rejection but does not expressly discloses a medium where a score is determined for an item that positively relates to the item's price. Walker discloses a medium including a score positively related to the item's price (Walker: abstract and

figures 3-7). The examiner notes that Walker discloses rewards for early adopters that positively depend upon the cost of the item they purchased and when the item was purchased. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Gross to have included scaling a score in a manner that causes to positively relate to the item's price, as taught by Walker, in order to provide early purchasers with incentive to buy the product early in the life cycle of the product and thereby promote the product (Walker: column 4, lines 4-15). Gross further discloses indicating a range for an item's score (see at least paragraph 86). Displaying a percentile or numerical range for a score of an item on a web page is non-functional descriptive material. Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. The critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate- In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II

Referring to claims 36, 39, and 41-44. Claims 36, 39, and 41-44 are rejected under the same rationale set forth above in the rejection of claims 10-14 and 15-17 containing similar limitations.

Response to Arguments

Applicant's arguments with respect to claims 10-17 and 35-44 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Dunham/
8/26/08